

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

EDWARD S. WALCZAK,

Defendant.

No. 20 Civ. 75

ECF Case

**DECLARATION OF SAMUEL WASSERMAN PURSUANT TO 28 U.S.C. § 1746 IN
SUPPORT OF PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

I, Samuel Wasserman, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am an attorney in the Division of Enforcement of the Commodity Futures Trading Commission (the “Commission” or “CFTC”), the Plaintiff in this matter. This declaration is based upon my personal knowledge in support of Plaintiff’s Motion for Summary Judgment.

2. Exhibits 5 through 14 and 21 through 29 attached hereto are documents or audio files produced to the CFTC by Catalyst Capital Advisors (“Catalyst”) in response to certain voluntary requests for information or investigative or Rule 45 subpoenas issued from March 2017 through the present.

Testimony

3. Attached hereto as Exhibit 1 is a true and correct copy of the transcript of investigative testimony taken by CFTC and Securities and Exchange Commission (“SEC”) staff of Defendant Edward Walczak on October 27, 2017.

4. Attached hereto as Exhibit 2 is a true and correct copy of the transcript of investigative testimony taken by CFTC and SEC staff of Defendant Edward Walczak on April 3, 2018.

5. Attached hereto as Exhibit 3 is a true and correct copy of the transcript of investigative testimony taken by CFTC and SEC staff of Defendant Edward Walczak on April 4, 2018.

6. Attached hereto as Exhibit 4 is a true and correct copy of the transcript of the deposition of Edward Walczak taken by the SEC on July 27, 2021, in the case *SEC v. Walczak*, No. 20-cv-00076 (W.D. Wis.).

Open House Calls

7. Exhibits 5 through 14 are true and correct copies of audio recordings produced to the CFTC by Catalyst. Per the certification attached hereto as Exhibit 34, these audio recordings are true and correct copies of Open House conference calls held by Mr. Walczak, recorded in the normal course of business. The table below lists the date of the Open House call (as reflected in the certification and in the file name of the recording) and the bates stamp associated with the audio file produced to the CFTC. Native copies of Exhibits 5 through 14 will be mailed to the Court on a CD. Placeholder slip sheets are attached hereto.

<u>Exhibit</u>	<u>Date of Open House Call</u>	<u>Bates Stamp</u>
Exhibit 5	November 4, 2014	CFTC_60
Exhibit 6	September 15, 2015	SEC10
Exhibit 7	October 6, 2015	Catalyst_003_28962
Exhibit 8	October 13, 2015	Catalyst_003_29411
Exhibit 9	February 2, 2016	Catalyst_003_41416

Exhibit 10	March 1, 2016	SEC2
Exhibit 11	June 7, 2016	Catalyst_003_57978
Exhibit 12	September 13, 2016	Catalyst_003_07869
Exhibit 13	October 25, 2016	Catalyst_003_11578
Exhibit 14	November 15, 2016	Catalyst_003_12536

8. Attached hereto as Exhibits 15 through 20 are true and correct copies of transcriptions of certain of the above audio recordings. These transcriptions were ordered by the SEC from Diversified Reporting Services and then shared with the CFTC and counsel for Defendant Walczak.

<u>Exhibit</u>	<u>Description</u>	<u>Date of Open House Call</u>
15	Transcription of audio recording of Open House Call	November 4, 2014
16	Transcription of audio recording of Open House Call	October 13, 2015
17	Transcription of audio recording of Open House Call	March 1, 2016
18	Transcription of audio recording of Open House Call	June 7, 2016
19	Transcription of audio recording of Open House Call	September 13, 2016
20	Transcription of audio recording of Open House Call	October 25, 2016

Other Documentary Evidence

9. Attached hereto as Exhibits 21 and 22 are true and correct copies of documents produced to the CFTC by Catalyst on May 30, 2019. The documents were produced to the CFTC with the Bates stamps CFTC3_00032436 and CFTC3_00030988, respectively.

10. Attached hereto as Exhibits 23 and 24 are true and correct copies of documents produced to the CFTC by Catalyst on February 5, 2018. The documents were produced to the CFTC with the Bates stamps SEC_04_0108144 and SEC_04_0109038, respectively.

11. Attached hereto as Exhibits 25 and 26 are documents produced to the CFTC by Catalyst on November 22, 2017. The documents were produced to the CFTC with the Bates stamps Catalyst_005_0182095 and Catalyst_005_0182096, respectively. The latter was produced as an “attachment” to the former, and as a native Excel file with the file name “HFXAX Exposure Summary.xlsx.” The native file will be mailed to the Court on a CD. A placeholder slip sheet for Catalyst_005_0182096 has been attached hereto. CFTC staff has also converted Catalyst_005_0182096 to PDF and appended it to the slip sheet, for reference.

12. Exhibit 27 is a true and correct copy of an Excel workbook produced to the CFTC by Catalyst on March 16, 2017. It was produced to the CFTC with the marking “Catalyst 1.1” and with the file name “Item 1.1 – HedgedFuturesPValbyMonth.xls.” The native file will be sent to the Court by mail on a CD and a placeholder slip sheet has been attached hereto. CFTC staff has converted a copy of the Excel file to PDF and appended it to the slip sheet, for reference.

13. Exhibit 28 is a true and correct copy of an Excel workbook produced to the CFTC by Catalyst on March 12, 2021. It was produced to the CFTC with the associated Bates stamp CFTC_216 and the file name “Catalyst Hedged Futures Net Assets – Sept. 2013 to Jan. 2020 – CONFIDENTIAL.xlsx.” The native file has been sent to the Court on a CD by mail and a placeholder slip sheet has been attached hereto. CFTC staff has converted a copy to PDF and appended it to the slip sheet, for reference.

14. Attached hereto as Exhibit 29 is a true and correct copy of Exhibit 27 to the CFTC’s deposition of Edward Walczak. That exhibit is a true and correct copy of a document

produced to the CFTC by Catalyst and was used during Mr. Walczak's deposition as a reference for questions regarding OptionVue's functionality.

Publicly Available Information

15. Attached hereto as Exhibit 30 are daily prices of the S&P 500 Index from September 3, 2013 through March 30, 2017, obtained by CFTC staff from publicly available sources, at <https://finance.yahoo.com/quote/%5EGSPC/history?p=%5EGSPC>.

16. Attached hereto as Exhibit 31 is the daily NAV (Net Asset Value) per share of the Catalyst Hedged Futures Strategy Fund from September 3, 2013 through March 30, 2017, obtained by CFTC staff from publicly available sources, at <https://finance.yahoo.com/quote/CWXIX/history?p=CWXIX>.¹

17. Attached hereto as Exhibit 32 is a true and correct copy of the CME Group's public description of the contract specifications of S&P 500 futures, available at <https://www.cmegroup.com/markets/equities/sp/sandp-500.contractSpecs.html>.

18. Attached hereto as Exhibit 33 is a true and correct copy of the CME Group's public description of the contract specifications of options on S&P 500 futures, available at <https://www.cmegroup.com/markets/equities/sp/sandp-500.contractSpecs.options.html#optionProductId=134>.

Certification

19. Attached hereto as Exhibit 34 is a true and correct copy of the Declaration of Records Custodian signed by Michael Schoonover on behalf of Catalyst.

¹ Since Walczak separated from Catalyst, the Fund has been renamed the Catalyst/Warrington Strategic Program Fund and has the ticker CWXIX.

VERIFICATION PURSUANT TO 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 30th day of August, 2021.

A handwritten signature in black ink, appearing to read "S. Wasserman", written over a horizontal line.

Samuel Wasserman